



WC 10-101
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STATE OF ILLINOIS
Illinois Commerce Commission

527 EAST CAPITOL AVENUE
SPRINGFIELD, ILLINOIS 62706

February 19, 1985

FILED/ACCEPTED

APR 26 2010

Federal Communications Commission
Office of the Secretary

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FEB 25 1985

ENFORCEMENT DIVISION

Federal Communications Commission
Room 6206
1919 M Street, N.W.
Washington, D.C. 20554
ATTENTION: Margaret Wood, Esq.

Dear Ms. Wood:

As stated in our letter of January 22, 1985, we are enclosing a certified copy of the rules as adopted in Docket No. 80-0249.

Very truly yours,

Rose M. Claggett

Rose M. Claggett
Chief Clerk

RMC:tmm

LAW OFFICES

TELEPHONE 459-2050

RECEIVED

FAX CODE 815

ZUKOWSKI, ZUKOWSKI, POPER & ROGERS

50 VIRGINIA STREET

CRYSTAL LAKE, ILLINOIS 60014

Aug 31 3 41 PM '78

EDWIN F. ZUKOWSKI
RICHARD R. ZUKOWSKI
MICHAEL C. POPER
H. DAVID ROGERS
W. RANDAL BAUDIN
RICHARD G. FLOOD

August 16, 1978

CHIEF, COMMON
CARRIER BUREAU

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Mr. Charles D. Ferris, Chairman
Federal Communications Commission
1919 "M" Street
Washington, D.C. 20554

Dear Chairman Ferris:

On August 5, 1978, the Illinois Commerce Commission adopted a Resolution and Certification wherein it certified to the Federal Communications Commission that it regulates rates, terms and conditions for pole attachments and, furthermore, has "the authority to consider and does consider the interests of the subscribers of cable television services in Illinois..." That Resolution and Certification was filed with the Federal Communications Commission.

The purpose of this letter is to advise you that a number of cable television operators in the State of Illinois have filed a Petition in the Circuit Court of the 19th Judicial Circuit, McHenry County, Illinois, case No. 78-MR-1039, asking that the action of the Illinois Commerce Commission be declared unconstitutional and the Resolution and Certification be declared null and void.

If you have any further questions, please let me know.

Thank you.

Very truly yours,



Richard R. Zukowski

RRZ:PK

cc: Mr. Larry F. Darby, Chief, Common Carrier Bureau
Mr. Phillip L. Verveer, Chief, Cable Television Bureau
Mr. James S. Blaszak, Common Carrier Bureau

JUDGES OF THE
NINETEENTH
JUDICIAL CIRCUIT

ROLAND A. HERRMANN
HENRY L. COWLIN
LEONARD BRODY

ASSOCIATE JUDGES

CONRAD F. FLOETER
MICHAEL J. SULLIVAN
HASKELL M. PITLUCK
SUSAN FAYETTE HUTCHINSON

VERNON W. KAYS, JR.

Clerk of the Circuit Court

19TH JUDICIAL DISTRICT

McHENRY COUNTY
WOODSTOCK, ILLINOIS 60098
TELEPHONE 815/338-2040

August 10, 1984

ASSOCIATE DIVISION

BRANCH I
2200 N. SEMINARY AVE.
WOODSTOCK, ILL. 60098
815/338-2040

BRANCH II
121 N. MAIN ST.
CRYSTAL LAKE, ILL. 60014
815/459-2341

BRANCH III
1111 N. GREEN ST.
McHENRY, ILL. 60050
815/385-0011

Federal Commerce Commission
Enforcement Division
Common Bureau
2025 "M" Street Room 6214
Washington, D. C. 20554

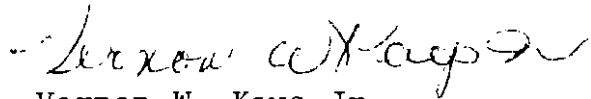
ATTN: Bert Weintraub

RE: 78 MR 1039 - Cable Television Company of Illinois
vs Illinois Commerce Commission et al

Dear Sir:

Enclosed is copy of order you requested in the above mentioned file.

Yours very truly,



Vernon W. Kays Jr.
Clerk of the Circuit Court

VWK/jmo



STATE OF ILLINOIS
Illinois Commerce Commission
527 EAST CAPITOL AVENUE
SPRINGFIELD, ILLINOIS 62706

January 22, 1985

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JAN 23 1985

ENFORCEMENT DIVISION

Federal Communications Commission
Room 6206
1919 M Street, N.W.
Washington, D.C. 20554
ATTENTION: Margaret Wood, Esq.

Dear Ms. Wood:

Enclosed herewith is a certified copy of the Illinois Commerce Commission's prospective rules governing CATV pole attachments. These rules have been the subject of extensive public hearings. Under the rule making procedure in effect in Illinois, all intermediate steps have been completed and final action is expected shortly. The Commission may make additional revisions to satisfy objections raised by the Joint Committee on Administrative Rules of the Illinois General Assembly. A certified copy of the rules as adopted will be forwarded to you upon adoption by the Commission.

With respect to the 180 days provision of the Act, the Act is controlling and deemed sufficient.

Yours very truly,

Rose M. Claggett
Rose M. Claggett
Chief Clerk

HS/tm

Enclosures

Certified copy of CATV rules

Certified copy of Rules of Practice

cc: Philip R. O'Connor, Chairman
Stephen Claggett
Hercules Bolos
Pat Foster

APR 26 2010

Federal Communications Commission
Office of the Secretary

Appendix A
80-0249

TITLE 83: PUBLIC UTILITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER b: PROVISIONS APPLICABLE TO MORE THAN
ONE KIND OF UTILITY
PART 315
POLE ATTACHMENT RATES, TERMS
AND CONDITIONS APPLICABLE TO CABLE TELEVISION COMPANIES
AND ELECTRIC AND TELEPHONE PUBLIC UTILITIES

Section

315.10 Statement of Purpose and Commission Policy
315.20 Preferred Pole Attachment Rental Rate Formula
315.30 Procedure

AUTHORITY: Implementing Section 27 and authorized by Section 8 of "An Act concerning public utilities" (Ill. Rev. Stat. 1983, ch. 111-2/3, pars. 27 and 8).

SOURCE: Adopted and codified at 9 Ill. Reg. _____, effective _____.

Section 315.10 Statement of Purpose and Commission Policy

- a) The purpose of this rule is to designate a preferred methodology for computation of annual rental rates to be paid by cable television ("CATV") companies to electric and telephone public utilities under the jurisdiction of the Illinois Commerce Commission for the use of space on such utilities' distribution poles for attachment of CATV cables and associated facilities.
- b) It is the policy of the Illinois Commerce Commission that CATV companies and public utilities should, to the maximum extent possible, endeavor to establish pole attachment rental rates through negotiation and without resort to the processes of the Commission. The preferred pole attachment rental rate formula is designated herein in order to provide guidance to all parties in such negotiations and to set forth the methodology the Commission intends to follow in exercising its authority under Section 27 of "An Act concerning public utilities" (Ill. Rev. Stat. 1983, ch. 111-2/3, par. 27) with respect to such controverted cases as are brought before it.

Section 315.20 Preferred Pole Attachment Rental Rate Formula

Subject to the provisions of Section 315.30 below, an annual pole attachment rental rate included in a pole attachment agreement between a CATV company and a public utility which is presented to the Commission for consent and approval under Section 27 of "An Act concerning public utilities" (Ill. Rev. Stat. 1983, ch. 111-2/3, par. 27) shall be presumed to be just and reasonable if shown to be equal to the rate resulting from the following formula:

$$\text{Rental Rate} = .75 \left[\frac{(\text{Cost per pole}) \times (\text{CATV Space})}{(\text{Total Usable Space})} \times (\text{Carrying Charge}) \right]$$

Where:

- a) "Cost per Pole" shall be the utility's book investment in 35 feet wooden distribution poles included in the electric utility Account 364 or telephone utility Account 241 at the most recent December 31, divided by the number of 35 feet wooden poles included in the account at such date.
- b) "CATV Space" shall be 1.5 feet, representing an allocation to the CATV company of 1 foot of the useful space for the CATV attachments and 6 inches of the neutral space on a joint use pole used by electric and communication utilities.
- c) "Total Usable Space" shall be 10 feet of a standard 35 feet distribution pole.
- d) "Carrying Charge" shall include the sum of the following components determined in the following manner:
 - 1) "Maintenance costs carrying charge" shall be the maintenance expense attributed to the maintenance of the poles and other equipment set forth in the respective electric utility Account 364 or telephone utility Account 241 as recorded in the books of accounts for the most recently completed calendar year divided by the respective cost of plant recorded in such plant account for the most recently completed calendar year.

- 2) "Administrative and general costs carrying charge" shall be calculated as the sum of the expenses recorded in the electric utility Accounts 920 through 932 or telephone utility Accounts 661 through 677 for the most recent completed calendar year, divided by the investment in electric or telephone utility plant in-service (including amounts unclassified and allocated common plant, if any) at the most recently completed calendar year.
- 3) "Depreciation expense carrying charge" shall be the annual depreciation rate applied to electric utility Account 364 or telephone utility Account 241, expressed as a decimal, for the most recently completed calendar year.
- 4) "Taxes other than income taxes carrying charge" shall be calculated using a methodology which reasonably develops the expense of invested capital tax and real estate tax for the most recently completed calendar year for which figures are available attributable to the ownership of the facilities recorded in Account 364 or 241, divided by the book cost of such plant.
- 5) "Return and income taxes carrying charge" shall be determined by the utility by considering the rates of return currently being permitted on depreciated original cost rate bases by the Commission. With said rate of return so determined, the return and income tax carrying charge shall be computed as follows:

$$RIT = \frac{r}{1.0 - f - s + fs} \times \frac{DOC}{OC}$$

Where:

- A) "RIT" is the return and income tax carrying charge;
- B) "r" is the rate of return expressed as a decimal;

- C) "f" is the effective federal income tax rate as charged by the utility in the most recently completed calendar year expressed as a decimal;
 - D) "s" is the effective state income tax rate as charged by the utility in the most recently completed calendar year, expressed as a decimal;
 - E) "DOC" is the depreciated original cost of the pole account as of the end of the most recent calendar year; and
 - F) "OC" is the original cost of the pole account, as of the end of the most recent calendar year.
- e) The electric accounts mentioned in this Section are those required to be maintained by 83 Ill. Adm. Code 415. The telephone accounts mentioned in this Section are those required to be maintained by 83 Ill. Adm. Code 710.

Section 315.30 Procedure

- a) Where a pole attachment agreement is not exempt pursuant to 83 Ill. Adm. Code 105 and 710 (formerly the Commission's General Orders 175 and 199), so that consent and approval of the Commission is required by Section 27 of "An Act concerning public utilities" (Ill. Rev. Stat. 1983, ch. 111-2/3, par. 27), and where the parties thereto have agreed to the annual rental rate specified in such agreement, the utility's petition for consent to and approval of the agreement shall be accompanied by verified statements of concurrence as to the rate, signed by a representative of each party. In such cases, no showing shall be required that the rental rate is equal to the rate resulting from the formula set forth in Section 315.20 hereof.
- b) Where a pole attachment agreement is not exempt pursuant to 83 Ill. Adm. Code 105 and 710 (formerly the Commission's General Orders 175 and 199), so that consent and approval of the Commission is required by Section 27

of "An Act concerning public utilities" (Ill. Rev. Stat. 1983, ch. 111-2/3, par. 27), and where the parties thereto have not agreed to an annual rental rate, the utility's petition for consent to and approval of the agreement shall be accompanied by an exhibit or exhibits showing that the rental rate proposed by the utility is equal to the rate resulting from the formula set forth in Section 315.20 hereof, or if there is a deviation from the formula, a statement explaining any deviations therefrom. Commission decisions under this Part shall be governed by the following standard: Costs will be assessed on a fully allocated basis so that neither the CATV company nor the public utility subsidizes the operations of the other. In determining whether to approve deviations from the formula set forth in Section 315.20, the Commission shall first consider the benefits to be derived by each party to the agreement, and then determine whether charges have been apportioned in accordance with those benefits.

- c) Where a pole attachment agreement provides that the annual rental rate shall be adjusted each year based on the most recent data applied in accordance with the formula set forth in Section 315.20 hereof, the consent and approval of the Commission to the rental rate resulting from such annual adjustment shall be required.

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

CERTIFICATE

I, ROSE M. CLAGGETT, do hereby certify that I am Chief Clerk of the Illinois Commerce Commission of the State of Illinois and keeper of the records and seal of said Commission.

I further certify that the above and foregoing is a true, correct and complete copy of the following:

Prospective rules governing CATV Pole Attachments

Given under my hand and seal of said Illinois Commerce Commission at Springfield, Illinois, on January 21, 1985.

A handwritten signature in cursive script, reading "Rose M. Claggett".

Chief Clerk